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FM AMEMBASSY BRASILIA
TO RUEHC/SECSTATE WASHDC 5995
INFO RUEHRI/AMCONSUL RIO DE JANEIRO 2417
RUEHRG/AMCONSUL RECIFE 5074
RUEHSO/AMCONSUL SAO PAULO 7379
RUEHBU/AMEMBASSY BUENOS AIRES 4125
RUEHAC/AMEMBASSY ASUNCION 5527
RUEHMN/AMEMBASSY MONTEVIDEO 6346
RUEHSG/AMEMBASSY SANTIAGO 5616
RUEHPE/AMEMBASSY LIMA 3070
RUEHCV/AMEMBASSY CARACAS 3331
RUEHQT/AMEMBASSY QUITO 1886
RUEHLP/AMEMBASSY LA PAZ 4689
RUEHBO/AMEMBASSY BOGOTA 3826
RUCPDO/USDOC WASHDC
RUEHGV/USMISSION GENEVA 1495

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SIPDIS

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STATE PASS USTR
GENEVA FOR USTR
STATE PASS USPTO
USDOC FOR 4332/ITA/MAC/WH/OLAC/MWARD
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SUBJECT: BRAZILIAN COPYRIGHT OFFICE SEEKS AN ALTERNATIVE PATH ON IPR ISSUES

11. (SBU) Summary. Recently, Econ and FCS personnel met with officials at Brazil's Copyright Office (organizationally, located within the Ministry Culture) to discuss Brazil's emerging policy on IPR and digital inclusion issues. This meeting was to follow-up on an earlier, June 7 session between U.S. Patent and Trademark Deputy Director Stephen Pinkos and counterpart Brazilian policy level officials. Our interlocutors outlined the full array of challenges they faced, inter alia, resistance within Brazilian domestic industry to paying royalties, bureaucratic and statutory obstacles to the development of a balanced doctrine of "fair use," and, of course, rampant piracy. (Notwithstanding Brazil's plethora of well-known musicians, because of copyright piracy, we were told, no more than 30 could make a living from musical royalties.) The Ministry had established a network of cultural facilities which artists could use for free, provided they licensed any works produced there to the creative commons. Internationally, our contacts complained of developed country dominance at the World Intellectual Property Organization (WIPO) and stated that the idea behind Brazil's proposed "Development Agenda" was to level the IPR playing field. End Summary.

12. (SBU) On June 28, FSC Deputy Senior Commercial Officer, Econ Counselor and Econ Assistant met with Marcel Alves da Souza, the head of the Ministry of Culture's Copyright Office, and Angeline Monteiro Prata, the Ministry's Copyright Manager, to learn more about the workings of that office. Souza declared that the Copyright Office was besieged on all fronts as private industry sought to enforce its legal rights in the face of widespread piracy, while government policymakers (in particular Minister of Culture Gilberto Gil) actively worked to afford citizens greater access to informational materials. Notwithstanding the Copyright Office's best efforts, it was becoming increasingly difficult to reconcile the conflicting demands, he stated.

Payments for Use of Copyrighted Songs in Audio-Visual Works

13. (SBU) Souza cited as an example the payment of fees to musical copyright holders when their works were used in domestic Brazilian films. In such cases, a private sector organization, RECADE, he noted, was charged with collecting compensation from filmmakers. However, the film industry balked at paying such monies, arguing (incorrectly) that this was not the practice in the U.S. Indeed, he continued, using that argument the film lobby had nearly gotten the Brazilian Congress to enact legislation withdrawing the legal requirement to pay compensation in these situations, though that effort had ultimately failed. Further complicating the matter, was the lack of transparency of RECADE itself, with a number of artists alleging that it keeps for itself an undue share of the fees collected on their behalf.

Piracy and the "Fair Use" Doctrine

14. (SBU) Discussion then turned to the issue of the scope of the "fair use" doctrine in Brazil - i.e., the degree to which the public could use minor portions of a copyrighted work without paying royalties to the author. Souza stated that while the vast disparities in income in Brazil militated in favor of an expanded "fair use" doctrine, in fact, Brazil, as was the case in many other Latin American countries, applied the concept more restrictively than in the United States. Part of the problem, he observed, was that statutory code, rather than common law, governed on this issue, and even though the relevant statute had been enacted in 1998 in many ways it was already out of date. The public's increasing use of the internet meant that the statute needed to be reworked. To help tip the scales in favor of reform, he observed, the Ministry sought to organize civil society groups (like libraries) to lobby for greater "fair use." However, the local IPR legal lobby vigorously opposed this, he noted, notwithstanding the fact that it

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was practically impossible for rightholders to collect royalties for such small-scale activity. All that restricting the "fair use" doctrine did, he concluded, was make the public insensitive to the difference between minor copying and blatant piracy.

15. (SBU) The textbook example of this, Souza stated, was textbooks. There were cases of enforcement entities catching students for small-scale copying while true pirates - i.e., those who xeroxed and sold entire textbooks - often got away scot free. The GOB realized that if it could persuade the publishing industry to lower the price of school books, then it might be able to reduce the economic incentive for piracy. Hence, the GOB eliminated valued added taxes on textbooks. Yet, the tax cuts did not result in lower prices, Souza said, as the industry - noting the limited demand for Portuguese-language publications - argued that its high prices helped it cover high costs due to the lack of economies of scale.

Digital Inclusion and Cultura Viva

16. (SBU) Souza noted that Minister Gilberto Gil was a strong advocate of accommodating intellectual property rights protection to "the needs of development." In this vein, Gil has been outspoken on issues such as free software and digital inclusion of disadvantaged populations. Domestically, one program which the Ministry has taken to implement this vision is "Cultura Viva," the principal element of which is the establishment of various cultural centers throughout the country where low-income artists could have access to studios, internet connections, and other production facilities. Cultural centers have been set-up - through contracts with local NGOs - in such major cities as Sao Paulo, Rio de Janeiro, Salvador, and Brasilia. The only requirement that the government levies on the use of such facilities is that the artist license whatever they produce to the creative commons. The idea is that providing young artists a platform to create, Souza said, gives them the opportunity to gain recognition - which can then translate into market bargaining power. The most notable works which have come from these cultural centers, he noted, have been innovative hip-hop routines produced in Rio.

The GOB's Development Agenda

¶7. (SBU) Souza, Brazil's representative at the World Intellectual Property Organization (WIPO), stated that the GOB felt that within that entity the deck was stacked in favor of the developed countries. The rich nations, he intimated, were able to buy votes from the Third World by offering benefits like technical assistance or even travel money and per diem. Hence, he said, the GOB and its emerging country allies, had formulated the "Development Agenda" to break the developed countries' hegemony over the discussion of IPR issues. The "Development Agenda," he continued, was simply the international component of the GOB's overall efforts to make IPR policy more consistent with the needs of emerging nations. International copyright protection should not be absolute, he declared, and Brazil was intent on pushing this point in multilateral fora. One example of how the status quo needed to change, he observed, was the treatment of translations. Given that so few people in Brazil spoke English, he noted, the issue of protection of translated work had special significance for the GOB. Why should a translated work receive full copyright protection, he asked, if the copyright had already lapsed on the original work?

Comment

¶8. (SBU) Though the positions Souza and Prata espoused were in line with the ruling PT party's stance on IPR, they took pains to make clear that they were non-partisan. As civil servants, they would

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likely remain in their jobs, they said, even if the opposition PSDB party (generally considered to be more business-friendly) were to prevail in the October 2006 election. Indeed, in our chat with him, Souza declared that the "Development Agenda" would remain high on Brazil's priorities within WIPO for the foreseeable future.

Williamson